

# Prohibiting all corporal punishment of children with disabilities – realising their right to equal protection from assault



Global Initiative to  
**End All Corporal Punishment  
of Children**

Submission to the Committee on the Rights of Persons with Disabilities on its draft General Comment on the right of persons with disabilities to equality and non-discrimination (Article 5), November 2017

Corporal punishment is the most common form of violence against children. In the majority of countries worldwide, children with disabilities are not afforded the same legal protection from assault as adults, including adults with disabilities; and the effects of this age discrimination is compounded by their disability which makes it more likely that they will be subjected to violence, including corporal punishment. States have an obligation under international human rights law to legally prohibit all forms of violence including corporal punishment of children, in all settings.

**The Global Initiative urges the Committee on the Rights of Persons with Disabilities to address corporal punishment of children, highlighting states' obligation to prohibit its use in all settings, in the following sections of General Comment No. 6 on the right of persons with disabilities to equality and non-discrimination:**

- **“General obligations of States parties under the Convention relating to non-discrimination and equality”**
- **“Article 7 – Children with disabilities”**
- **“Article 16 – Freedom from exploitation, violence and abuse”**
- **“Article 24 – Education”**

## **The effect of the legality of corporal punishment on children with disabilities**

Studies have shown that corporal punishment – defined as “any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light”<sup>1</sup> – is the most common form of violence against children. UNICEF statistics from 62 countries published in 2014 show the huge scale of violent punishment of children: about 80% of children aged 2-14 were subjected to “violent discipline” (physical punishment and/or psychological aggression) in the home in the past month, and 17% experienced severe physical punishment (being hit on the head, ears or face or being hit hard and repeatedly).<sup>2</sup> A 2017 UNICEF publication estimated that 75% of all children aged 2-4 had been subjected to violent discipline in the home in the past month,<sup>3</sup> based on data from 94 countries. The prevalence of violence in “disciplining” children illustrates that corporal punishment of children is widely socially accepted, whereas assault against adults is criminalised. But all children have a right to equal protection under the law. If anything, smaller and more vulnerable members of society should benefit from a higher rather than lower level of protection than adults.

Children with disabilities are disproportionately subjected to corporal punishment. A study published in 2013, which used UNICEF data on more than 45,000 children aged 2-9 from 17 countries, found that children with disabilities were more likely to be physically punished and more likely to experience severe physical punishment than children without disabilities. Caregivers of children with disabilities were also more likely to

<sup>1</sup> Committee on the Rights of the Child, General Comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia), para. 11

<sup>2</sup> UNICEF (2014), *Hidden in Plain Sight: A statistical analysis of violence against children*, NY: UNICEF

<sup>3</sup> UNICEF (2017), *A Familiar Face: Violence in the lives of children and adolescents*, NY: UNICEF

believe that they needed to use physical punishment (as opposed to non-violent, positive discipline) than caregivers of children without disabilities.<sup>4</sup>

This violent discipline is not however confined to the home. In 2009, a study by the American Civil Liberties Union (ACLU) and Human Rights Watch looked at corporal punishment of children with disabilities in American schools. The report shows that students with disabilities experience a high rate of “paddling” (beating with a wooden paddle). Students with disabilities were disproportionately affected, making up 18.8% of students who experienced this form of corporal punishment in schools in 2006-7 despite constituting only 13.7% of the total student population. In the states that use the most corporal punishment, students with disabilities were up to twice as likely as students without disabilities to experience this form of corporal punishment. In addition to paddling, students with disabilities were also spanked, slapped, pinched, dragged across the floor and thrown to the floor. Most instances of corporal punishment uncovered by the report were in response to minor infractions of the rules such as lateness. Students with disabilities were also punished for behaviours connected to their disabilities: for example, students with autism were punished for rocking, spinning and other behaviours that were a direct result of their condition.<sup>5</sup>

Children with disabilities are also more likely to be in institutional care where they can often experience extreme violence, including corporal punishment.<sup>6</sup> A 2014 report on orphanages in Russia documented widespread severe physical punishment of children with disabilities, including children being beaten and having cold water poured over their heads.<sup>7</sup> Studies in Mexico<sup>8</sup> and Serbia<sup>9</sup> found that children with disabilities in psychiatric hospitals, institutions, care facilities and shelters were kept in permanent restraints, including being tied to chairs, tied up with bedsheets and kept in cribs. Faced with this evidence, the Committee on the Rights of Persons with Disabilities has already highlighted states’ obligation to prevent and redress any violence and abuse committed against persons with disabilities living in institutional care.<sup>10</sup>

This disproportionate mistreatment of children with disabilities, and the fact that they are often punished for behaviours linked to their disabilities, is clearly discriminatory – both directly and indirectly. Arbitrary discriminations within the broader social group of children with disabilities can also emerge. In the American state of Oklahoma for example, a law was passed in 2017 which prohibited the use of corporal punishment against “students identified with the most significant cognitive disabilities”.<sup>11</sup> In that particular case, there is a direct violation of article 5 of the Convention in that all children with disabilities are not treated as equal before the law and on an equal basis with others, and in particular other children with disabilities quantified as “more severe”. The prevalence of corporal punishment in educational settings also effectively curtails children

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<sup>4</sup> Hendricks, C. et al (2014), “Associations Between Child Disabilities and Caregiver Discipline and Violence in Low- and Middle-Income Countries”, *Child Development*, published online 29 July 2013

<sup>5</sup> Human Rights Watch & American Civil Liberties Union (2009), *Impairing Education: Corporal Punishment of Students with Disabilities in US Public Schools*, [www.hrw.org/node/84950](http://www.hrw.org/node/84950)

The report was based on data from 202 interviews with parents, students, teachers, administrators, and special education professionals, and 9 statistics from the Office for Civil Rights at the US Department of Education.

<sup>6</sup> UNICEF (2013), *The State of the World’s Children 2013: Children with Disabilities*, NY: UNICEF, pp. 42-43

<sup>7</sup> Human Rights Watch (2014), *Abandoned by the State: Violence, Neglect, and Isolation for Children with Disabilities in Russian Orphanages*

<sup>8</sup> Rosenthal, E. et al (2010), *Abandoned & Disappeared: Mexico’s Segregation and Abuse of Children and Adults with Disabilities*, Mexico City: Disability Rights International & Comisión Mexicana de Defensa y Promoción de los Derechos Humanos

<sup>9</sup> Ahern, L. et al (2007), *Torment not Treatment: Serbia’s Segregation and Abuse of Children and Adults with Disabilities*, Washington, DC: Mental Disability Rights International

<sup>10</sup> Committee on the Rights of Persons with Disabilities, General Comment No. 5 (2017) on living independently and being included in the community, para. 84

<sup>11</sup> Oklahoma House of Representatives (2017), House Act 1623

with disabilities' right to education,<sup>12</sup> in violation of the principle of non-discrimination<sup>13</sup> according to which children with disabilities should be able to enjoy their fundamental rights on an equal basis with others.

The prevalence of corporal punishment against children with disabilities illustrates multiple and intersectional discrimination, as the factors of age and disability converge to compound the effects of the discrimination – here, the legality of assault in the name of “discipline”. Although all children, including children with disabilities, have the right to equal protection from assault under the law, corporal punishment can have particularly adverse consequences on children with disabilities whose medical conditions can be aggravated from the punishment itself. Experiencing physical punishment can also trigger a phase of regression in developmental terms.<sup>14</sup>

### **The international obligation to prohibit all forms of corporal punishment**

The Convention on the Rights of Persons with Disabilities confirms that children with disabilities should enjoy all human rights and fundamental freedoms on an equal basis with other children (article 7). The Convention also states that all persons have the rights to freedom from torture or cruel, inhuman or degrading treatment or punishment (article 15), to freedom from exploitation, violence and abuse within and outside the home (article 16) and to respect for their physical and mental integrity (article 17). The jurisprudence of treaty monitoring bodies, led by the Committee on the Rights of the Child, is clear that these rights put an obligation on states parties to prohibit and eliminate all corporal punishment of children, including within the family. In its General Comment No. 8 (2006) on “The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia)”, the Committee on the Rights of the Child consolidates this right, confirming the obligation on states parties to the Convention to reform their laws to prohibit all corporal punishment and providing a benchmark by which to assess whether or not prohibition has been achieved.<sup>15</sup>

In 2016, the Committee on the Rights of Persons with Disabilities adopted General Comment No. 4 on the right to inclusive education (article 24). The Committee has therefore already made it clear that disabled children can be disproportionately affected by violence and that under the Convention on the Rights of Persons with Disabilities, states parties must challenge this by prohibiting all forms of corporal punishment, by stating:

“Persons with disabilities, in particular women and girls with disabilities, can be disproportionately affected by violence and abuse, including physical and humiliating punishments by educational personnel, for example through the use of restraints and seclusion and bullying by others in and en route to school. To give effect to article 16 (2), States parties are required to take all appropriate measures to provide protection from and prevent all forms of exploitation, violence and abuse, including sexual violence, against persons with disabilities. Such measures must be age-, gender- and disability-sensitive. The Committee strongly endorses the recommendations of the Committee on the Rights of the Child, the Human Rights Committee and the Committee on Economic, Social and Cultural Rights that States parties prohibit all forms of corporal punishment and cruel, inhuman and degrading treatment in all settings, including schools, and ensure effective sanctions against perpetrators.”<sup>16</sup>

Between September 2016 and September 2017, the Committee has recommended prohibition of all corporal punishment of children to nine out of the thirteen non-prohibiting states it has examined – tripling in one year

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<sup>12</sup> Article 24 of the Convention on the Rights of Persons with Disabilities

<sup>13</sup> Article 5(2) of the Convention on the Rights of Persons with Disabilities

<sup>14</sup> Human Rights Watch & American Civil Liberties Union (2009), *Impairing Education: Corporal Punishment of Students with Disabilities in US Public Schools*, [www.hrw.org/node/84950](http://www.hrw.org/node/84950)

<sup>15</sup> Committee on the Rights of the Child, General Comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia)

<sup>16</sup> Committee on the Rights of Persons with Disabilities, General Comment No. 4 (2016) on the right to inclusive education, para. 51

the amount of recommendations on prohibition it has made since the beginning of its work.<sup>17</sup> Global progress towards prohibition is accelerating: as of November 2017, 53 states have enacted prohibition of all corporal punishment and a further 55 states are committed to doing so. Significant human rights pressure must continue to be applied in order to keep momentum going.

### Recommended amendments

The Committee on the Rights of Persons with Disabilities has already taken a significant step in General Comment No. 4 by laying out a clear obligation on signatory states to prohibit corporal punishment in all settings. This commitment should now be reinforced in General Comment No. 6 on equality and non-discrimination, in which a reminder of states' obligation to guarantee the right of children with disabilities to be equally protected under the law from assault would be particularly appropriate. Studies have consistently shown that children with disabilities are amongst the most at risk to suffer from violent discipline, which is often particularly harmful to them, and that this is a result of discriminatory treatment. Therefore, the Global Initiative respectfully urges the Committee to address corporal punishment of children with disabilities and remind states of their obligation to prohibit its use within General Comment No. 6 on equality and non-discrimination, under the following sections:

1. *“General obligations of States parties under the Convention relating to non-discrimination and equality”*

Paragraph 32 lists the most common “laws, regulations, customs and practices” that discriminate against persons with disabilities, but it does not refer to violence and abuse and in particular the physical punishment which is prevalent against children with disabilities.

Suggested insertion (underlined):

32. ... The Committee has on several occasions given examples in this regard: guardianship laws and other rules infringing upon the right to legal capacity, mental health laws which legitimize forced institutionalization and forced treatment, non-consensual sterilization of women and girls with disabilities, inaccessible housing and institutionalization policy, segregated education laws and policies, legality of corporal punishment of children which disproportionately affects children with disabilities,<sup>18</sup> or election laws disenfranchising persons with disabilities.

2. *“Article 7 – Children with disabilities”*

The legality of corporal punishment of children with disabilities is an instance of multiple discrimination, as both their age and their disability converge to disproportionately affect them. This multiple discrimination can also be compounded by further factors such as gender and race. Paragraph 42 must specify that part of states' obligation to prohibit “all forms of discrimination on the basis of disability that are specific to children” is to prohibit all corporal punishment, in all settings.

Suggested insertion (underlined):

42. States parties must prohibit all forms of discrimination on the basis of disability that are specific to children; provide effective and accessible remedies; raise awareness among the public and professionals to prevent and eliminate discrimination; and implement a national policy and plan of action to this end. In many states for instance, children can lawfully be assaulted under the guise of “discipline” or “safety” (e.g. restraint)

<sup>17</sup> For example: 3 October 2016, CRPD/C/ARE/CO/1, Concluding observations on initial report, paras. 29 and 30; 2 May 2017, CRPD/C/BIH/CO/1, Concluding observations on initial report, paras. 14 and 15; 29 August 2017, CRPD/C/PAN/CO/1 Advance unedited version, Concluding observations on initial report, in Spanish only, paras. 22 and 23

<sup>18</sup> Pinheiro, P. S. (2006), World Report on Violence against Children, Geneva: United Nations; see also Committee on the Rights of Persons with Disabilities, General comment No. 4 (2016) on the right to inclusive education, para. 51, Relationship with other provisions of the Convention, CRPD/C/GC/4

and are not afforded the same protection under the law as adults, including adults with disabilities. This physical punishment often disproportionately affects children with disabilities. States parties must prohibit all forms of corporal punishment and cruel, inhuman and degrading treatment of children, in all settings, and ensure appropriate measures are taken to enforce this ban.

### 3. “Article 16 – Freedom from exploitation, violence and abuse”

As currently drafted the commentary on articles 14, 15, 16, and 17 does not mention physical punishment, which is the most common form of violence against children. To give effect to article 16, States must have an obligation to prohibit all corporal punishment of children with disabilities.

Suggested insertion (underlined):

63. The Committee is particularly concerned about discriminatory deprivation of liberty, discriminatory torture or cruel, inhuman or degrading treatment or punishment, violence against persons with disabilities and discriminatory forced treatment of persons with disabilities in and outside mental health facilities. Persons with disabilities can be disproportionately affected by violence, abuse and other cruel and degrading punishment, including corporal punishment which can take the form of restraint and segregation as well as violent assault. States parties must take all appropriate measures, including legislative reform, to provide protection from and prevent all forms of exploitation, violence and abuse against persons with disabilities. The Committee reiterates its strong endorsement of the recommendations of the Committee on the Rights of the Child, the Human Rights Committee and the Committee on Economic, Social and Cultural Rights that States parties prohibit all forms of corporal punishment and cruel, inhuman and degrading treatment in all settings and ensure effective sanctions against perpetrators.<sup>19</sup>

### 4. “Article 24 – Education”

Under article 24 of the Convention, children with disabilities have a right to education but there are many practical obstacles to this. Students with disabilities are more likely to be physically punished in schools, often for behaviours linked to their disability. Prohibition of all corporal punishment is necessary to implement article 24 of the Convention.

Suggested insertion (underlined):

70. ... Article 5(1) interacts with article 24 of the Convention and requires States parties to remove all types of discriminatory barriers, including legal and social barriers, to inclusive education. As stated in General Comment No. 4 (2016) on inclusive education, this requires the prohibition of all forms of corporal punishment and cruel, inhuman and degrading treatment in all settings, including schools, as it disproportionately affects students with disabilities.<sup>20</sup>

*Submission prepared by the Global Initiative to End All Corporal Punishment of Children, November 2017*

<sup>19</sup> Committee on the Rights of Persons with Disabilities, General comment No. 4 (2016) on the right to inclusive education, para. 51

<sup>20</sup> Committee on the Rights of Persons with Disabilities, General comment No. 4 (2016) on the right to inclusive education, para. 51

### **About the Global Initiative to End All Corporal Punishment of Children**

Launched in 2001, the Global Initiative to End All Corporal Punishment of Children<sup>21</sup> promotes universal prohibition and elimination of corporal punishment of children in fulfilment of states' obligations under the UN Convention on the Rights of the Child, the UN Convention on the Rights of Persons with Disabilities and other international treaties. It freely offers technical support and advice on all aspects of law reform and regularly briefs several UN treaty bodies on this issue, including the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities. Our aims are supported by UNICEF, UNESCO, the International Disability Alliance, Disability Rights International, Inclusion International, and many other international and national NGOs.

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<sup>21</sup> [www.endcorporalpunishment.org](http://www.endcorporalpunishment.org), [info@endcorporalpunishment.org](mailto:info@endcorporalpunishment.org)